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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,071	02/20/2002	Roland Neubert	20959/1680 (P 54746)	6986

7590 02/24/2004
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EXAMINER

NILAND, PATRICK DENNIS

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No.	Applicant(s)	
	10/079,071	NEUBERT ET AL.	
	Examiner	Art Unit	
	Patrick D. Niland	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Art Unit: 1714

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5356951 Yearn et al. in view of WO 00/61073 blackwell et al., DE 3502594 A1 Michl et al., US Pat. No. 4503169 Randklev, and US Pat. No. 4668712 Hino et al..

Yearn et al. discloses particulate composite filler of mean particle size of 5-50 micrometers (column 4, lines 21-24) and tooth filling material containing monomer and the composite filler. Yearn et al. does not disclose the instantly claimed restriction on amount of particles with a size less than 10 micrometers. See column 2, lines 25-41; column 3, lines 40-68; column 4, lines 1-2 and 11-68; column 5, lines 6-9; and the remainder of the document. The examples use the instantly claimed amount of polymerization initiator, which amounts are those commonly employed in polymerization of unsaturated monomers.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the instantly claimed particle size limitations of claims 1, 2, and 10 because Blackwell et al. discloses the benefits of using such size ratios (page 3, line 21 to page 4, line 26) and these benefits resulting from the particle size limitations of Blackwell would have been expected in the compositions of Yearn.

Art Unit: 1714

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the ytterbium fluoride of the instant claim 8 and 18 because Yearn desires the use of roentgenographic compounds in their compositions and Michl et al. shows ytterbium fluoride to be a particularly useful roentgenographic compound for use in fillings and its properties would have been expected in the composition of Yearn.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the instantly claimed precipitated mixed oxides of the instant claims 9 and 22-25 because Yearn teaches that any glass powders can be used at column 3, lines 44-68 and column 4, lines 11-12 and 21-32 and such precipitated mixed oxides would have been expected to give their known properties, as taught by Randklev, to the composition of Yearn, who teaches that known additives may be used.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the layered silicates, i.e. bentonite clays, of the instant claims in the composition of Yearn because they would have been expected to give their known properties, as taught by Hino et al., to the composition of Yearn, who teaches that known additives may be used.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Niland whose telephone number is (571) 272-1121. The examiner can normally be reached on Monday through Thursday from 10 a.m. to 5 p.m.


Art Unit: 1714

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

pn

February 19, 2004


Patrick Niland
Primary Examiner
Art Unit 1714